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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1918

No. [redacted]219

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, APPELLANT,

vs.

JOSEPH J. DARLINGTON AND JOHN H. CLAPP, TRUSTEES, ESTATE OF JOHN M. CLAPP, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 2, 1917.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 558.

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INDEX.

1 Court of Appeals of the District of Columbia.

JOSEPH J. DARLINGTON ET AL., APPELLANTS,
vs.
FRANKLIN K. LANE, ETC. } No. 3014.

Supreme Court of the District of Columbia.

JOSEPH J. DARLINGTON AND JOHN H. CLAPP, trustees of the estate of John M. Clapp, deceased, plaintiffs,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, defendant. } In Equity. 33205.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:

Bill.—Filed January 29, 1915.

In the Supreme Court of the District of Columbia.

JOSEPH J. DARLINGTON AND JOHN H. CLAPP, trustees of the estate of John M. Clapp, deceased, plaintiffs,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR, defendant. } In Equity. 33205.

To the Supreme Court of the District of Columbia, holding an Equity Court:

Your orators complain and say that they are citizens and residents of the city of Washington, in the District of Columbia, and
2 bring this complaint as trustees on behalf of the estate of John M. Clapp, deceased, the owner of the certain grant of land known as the Muscupiabe grant, in the State of California, hereinafter more particularly described, and that they bring this complaint against Franklin K. Lane, a citizen of the State of California, residing in the District of Columbia;

1. That in 1843 Michael White petitioned for a tract of land at the mouth of the Cajon de los Mejicanos. This petition was sustained and a judgment made by the Mexican governor of the Californias. February 8, 1853, a petition for confirmation of this grant was presented in the name of the original grantee to the board of commissioners, appointed to ascertain and settle private land claims,

and on March 6, 1855, the grant was confirmed by an order in these words:

"In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that his application for a confirmation be allowed, with the following boundaries, to wit: On north and east by the foot of the mountain, on the south by the Agua Caliente, and on the west by the cottonwoods, which are on the other side of the creek, reference being had to the map accompanying the expediente."

An appeal was taken from this order of confirmation which was dismissed June 8, 1857. In 1867 instructions were issued by the surveyor general of California for the survey of this grant which was made and approved by him, the grant being commonly known as the Muscupiabe grant. This survey was, on July 11, 1868, forwarded by the surveyor general to the Land Department at Washington, D. C. In January, 1871, the Secretary of the Interior disapproved of the survey, but on the report of the surveyor general of June 10, 1872, which showed that the land included in the survey as made was less than that called for by the decree of confirmation, and that the grantee claimants were willing to accept under the survey as made, the Secretary of the Interior set aside his order of disapproval, approved of the survey, and, on June 22, 1872, the patent of the United States issued thereon.

2. May 29, 1885, a bill was filed in the name of the United States to set aside the patent because of alleged misrepresentations and fraud, resulting in the acceptance of the survey on which the patent issued, and this suit was prosecuted to the Supreme Court of the United States. U. S. v. Hancock, 133 U. S., 193. The court found that the allegations of fraud were not sustained, and respecting the question as to the correctness of the survey as made, it was said at page 197 of the opinion:

"Some question is made as to the correctness of the survey, and that turns as a question of fact upon what is meant by the expression 'Agua Caliente' in the various descriptions. If it means a stream known as Agua Caliente, then the Government has no cause to challenge the survey, for it includes less than was really confirmed, but if it means a district of country known by that name in the northwestern portion of the San Berna-dino Rancho, a
3 neighboring tract, then the survey was excessive. If it were necessary for us to determine this question, we think the evidence in the case indicates the stream and not the district was intended, but it is not the province of this court to correct a mere matter of survey like that. If made in good faith and unchallenged as this has been for over fifteen years, whatever doubts may exist as to its correctness must be resolved in favor of the title as patented."

3. It is under the grant as thus confirmed, surveyed, patented, and sustained by the decision of the Supreme Court of the United States

that the plaintiffs claim title through mean conveyances from the original owners and grantees.

4. That in the late nineties a question was raised as to the proper markings of a certain portion of the northern boundary of the grant, as surveyed and patented, and to reestablish the patented limits a contract was entered into by the land department with one George H. Perrin. The boundary of the Muscupiabe grant, as surveyed and patented in 1872, is irregular in form, showing forty-nine stations in the outer boundary. In the survey made by Perrin the original monuments were found and reestablished excepting between stations twenty and twenty-five. Between these two stations the survey, as made by Perrin, was protested by the owners under the Mexican grant because not following the calls in the patent, and this protest was carried to the Secretary of the Interior and considered in his decision of October 30, 1902, wherein, after a most exhaustive consideration, he refused to accept and approve of the Perrin survey and carefully laid down the rule under which the survey was to be made. A copy of the said decision of October 30, 1902, is hereto attached, marked "Plaintiffs' Exhibit A," and made a part of this bill as though herein set out in full.

5. A survey was made in accordance with the directions laid down in the said opinion of the Secretary of the Interior, commonly known as a Sickler survey, which survey was approved by the Commissioner of the General Land Office May 19, 1906, and by the Secretary of the Interior February 28, 1907.

6. That at the time of the filing of this bill the defendant, Franklin K. Lane, was and he still is Secretary of the Interior and as such has charge of the administration of the laws relating to the public lands and the administration of all grants made by Congress, and is sued in his official capacity as Secretary of the Interior.

7. That although the grant had been patented as long ago as 1872 and the question as to the reestablishment of the boundaries under the outstanding patent had been decided and determined by the final decision of the land department as long ago as 1902 and the survey made in accordance therewith had been duly accepted and approved by the Secretary of the Interior as long ago as 1907 the defendant, Franklin K. Lane, in a decision dated September 5, 1913, signed by Adrieus A. Jones, the First Assistant Secretary of the Interior, acting under the said defendant as by law provided, assumed jurisdiction of the matter of the reestablishment of the boundaries of this grant as patented and by order made therein rejected and held
4 for naught the said previously approved survey made by Sickler and directed the Commissioner of the General Land Office to take appropriate steps to reestablish and appropriately mark the Perrin line, previously rejected by the department, as herein set forth, the result of which order, if carried into effect will be the destruction of the markings of the survey of this grant by Sickler as approved, as hereinbefore stated in 1907; the casting of a cloud upon

the title of your orator as to the portion of the land falling between the two surveyed lines; the institution of numerous suits, greatly to the annoyance, prejudice, and irreparable loss, damage, and injury to your orator. A copy of the said decision of September 5, 1913, is hereto attached, marked "Plaintiffs' Exhibit B," and made a part hereof as though fully set out.

8. That thereupon the plaintiffs herein caused request to be made in formal manner of the said defendant Franklin K. Lane for the revocation of his said order of September 5, 1913, urging that the land in dispute had, by reason of the patent and the approved re-establishment survey hereinbefore referred to, become severed from the mass of the public domain and therefore beyond his jurisdiction and power of action as Secretary of the Interior, and this request has, under date of December 16, 1914, been denied and his previous order of September 5, 1913, contemplating the destruction of the existing survey and the institution of a new one is adhered to. A copy of the decision of December 16, 1914, is hereto attached and marked "Plaintiffs' Exhibit C" and made a part hereof as though set out herein in full.

9. That your orator has no adequate remedy at law and is otherwise remediless except in equity to prevent the carrying out of the arbitrary, unlawful, and unwarranted action of the defendant herein complained of.

Wherefore, your orator prays:

That your honor grant to your orator your writ of injunction, enjoining the defendant, Franklin K. Lane, Secretary of the Interior, as aforesaid, and his successors in office and all persons claiming to act under his authority or control, absolutely to desist and refrain from further proceeding under his said order of September 5, 1913, in attempted resurvey of your orator's grant, until your honor shall appoint and direct an order herein, and that upon such hearing the writ herein prayed be granted and continued until the final determination of this suit; and upon such final hearing be made permanent.

To the end that the defendant may if he can show why your orator should not have the relief hereby prayed and may full, true, and perfect answer make, according to the best of his knowledge, remembrance, information, and belief, to the several matters herein averred and set forth as fully and particularly as if the same were herein repeated, paragraph for paragraph, and he was thereto specifically interrogated, may it please your honor to grant unto your orator a writ of subpœna ad respondem, issuing out of and under the seal of this honorable court directed to the said defendant,

Franklin K. Lane, commanding him to be and appear and
5 make answer unto this bill of complaint and perform and abide by such order and decree herein, as before this court may seem to be required by the principles of equity and good conscience.

And that your orator may have such other or further relief in the premises as the nature of the circumstances of the case may require.

JOSEPH J. DARLINGTON,
JOHN H. CLAPP,
By F. W. CLEMENTS, *Att'y.*

ALEXANDER BRITTON,
EVANS BROWNE,
FRANCIS W. CLEMENTS,
Attorneys.

DISTRICT OF COLUMBIA, *ss:*

On this 28th day of January, 1915, before me personally appeared J. J. Darlington, one of the above-named plaintiffs, who made solemn oath that he had read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSEPH J. DARLINGTON.

Subscribed and sworn to before me this 28th day of January, 1915.

[SEAL.] I. H. LINTON,
Notary Public, D. C.

PLAINTIFFS' EXHIBIT A.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 8, 1915.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed copy of decision of the Secretary of the Interior, dated October 30, 1902, in the matter of the resurvey of the North Boundary Rancho Muscupiabe, California, is a true copy as shown by the records and files of the Department of the Interior.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

[SEAL.] BO SWEENY,
Assistant Secretary of the Interior.

Revenue stamp.

6 Department of the Interior.

E. F. B.
S. V. P.

29–1174. WASHINGTON, *October 30, 1902.*

In the matter of the resurvey of the north boundary, Rancho Muscupiabe, California.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: With your letter of September 18, 1902, you transmit the papers in the appeal of John M. Clapp from the decision of your

office of July 12, 1902, accepting the survey of the north boundary of the Rancho Muscupiabe, made by Deputy Surveyor Perrin in 1896, and declining to have any further survey made thereof.

The controversy relates to that portion of the north boundary of the rancho between stations 20 and 25, as established by Henry Hancock in 1867, running through township 1 north, ranges 4 and 5 west, and township 2 north, range 5 west. That portion of the boundary of said rancho was relocated by Deputy Surveyor Perrin in 1885 in connection with the survey of public lands north of said reservation which have since been set apart as a forest reserve. Final action upon Perrin's survey was suspended pending a suit by the United States to vacate and set aside the patent to said rancho, because of fraud in the location and survey of the grant. Said litigation having terminated with the decision of the Supreme Court sustaining the validity of said location (U. S. v. Hancock, 133; U. S., 193), the surveys were completed by Deputy Perrin in 1896 under special instructions.

It seems to be generally conceded that Perrin's resurvey of the boundary from station "M 1" (Muscupiabe 1) to "M 20" apparently conforms to the original survey of the grant as near as practicable, and "M 20" as located by Perrin appears to be generally accepted as the original monument established by Hancock, who surveyed the grant. The concurring proofs furnished by the reports of the several surveys and examinations made of this line and the finding of the mark "M 20" upon the tree is sufficient evidence to set at rest every question as to the correctness of that location and to fix it as a well-established monument.

In 1885 Perrin retraced the line from that station to station 2 by running N. 54° E.–30.15 chains to a burned sycamore stump. In resurveying this line in 1896 he ran from M 20 54° E. on a random line 20 chains to a blazed sycamore tree which he reported is known by old settlers as "M 21." He prolonged the line, however, to 30 chains and reported that he found no trace of sycamore tree or evidence of there ever having been a tree at that point. He says: "I therefore determine that the sycamore at 20 chains is the corner and, after correcting his course, he ran a true line and marked the sycamore found at 20 chains "M 21." Because of this discrep-
7 ancy in the two surveys and of other errors apparent on the face of the returns, he was required to show cause why he was unable to place confidence in the retracement of his course from 20 to 21, made in 1885, and why he should not return to the field and correct his survey. In response to said rule Perrin stated that the retracement made in 1885 was simply a reconnoissance and that he had not at that time found the sycamore which he afterwards identified as "M 20." He also pointed out inconsistencies that would result by reversing the course from station 25, which he considered properly identified—if the length of the line between 20 and 21 was fixed at 30 chains. The explanation of Perrin was considered a sufficient answer to the rule, and in view of the fact that there

appeared to be other evidences of such general looseness and occasional errors in the Hancock survey as to preclude a correct adjustment of it upon any theory your office, by letter of October 30, 1901, determined that the survey of Perrin as a compromise line appeared to be reasonable and it was deemed best to accept it. From that decision John M. Clapp, the owner of that portion of the grant affected by said resurvey, appealed to the department, but before a decision was rendered the papers, upon your request, were returned that you might be allowed to vacate your decision and to have a further examination made of said line as requested by appellant.

W. S. Owen, a special examiner, was then directed to resurvey the line between stations 20 and 25, which were regarded as fixed—with a view to having it established as the permanent line if his survey should be approved. He was specially instructed to run the line so as to include as much of the arable and slightly sloping land of the valley as he might deem would be a reasonable compliance with the purpose of the grant "without ascending over high projections of the irregular mountain side, thus striking a fair average line between hill and valley." His instructions were, substantially, to the effect that he should follow the foot of the mountain which you state is one of the positive and certain calls of the grant and a natural object or feature that controls in the location of said line.

Examiner Owen appears to have executed his work strictly in conformity with those instructions and as a result thereof he finds that the line between said stations as surveyed by Perrin "is a fairly good average between hill and valley and that it complies substantially with the terms of the grant." You approved said report, being satisfied from the separate reports of three special examiners that no possible theory or rule could be adopted which would accurately locate the line of the Hancock survey, and that it would be unwise to prolong the process of amending such line, except upon the clearest evidence of its location. It was, therefore, ordered that Perrin's survey be approved. John M. Clapp has again appealed from your decision.

The Mu-cupiabie grant was surveyed by Henry Hancock in 1867, according to the boundaries specified in the decree which gave "the foot of the mountain" as the north boundary. Hancock's survey was, at first, rejected by the Secretary of the Interior because
8 it did not conform to the decree of confirmation, but, substanquently, the survey was approved as conforming to the grant and thereupon patent issued. The question as to the correctness of that survey was involved in the suit by the United States against Hancock, supra, and was determined in favor of the survey. The United States has no authority to change or amend that line. It can only relocate the line as fixed by the Hancock survey in order that the public land surveys may be closed upon it, and the general rules that govern in the establishment of boundaries are applicable to and must control your office in relocating and establishing this line.

Those rules and the order in which they are usually considered are: First, natural boundaries; second, artificial marks; third, adjacent boundaries; and fourth, course and distance. These rules, however, are not inflexible, as where the location of monuments and objects called for are involved in doubt and obscurity and can not be ascertained with any reasonable degree of certainty, and where no mistake can reasonably be supposed in course and distance. The controlling principle in the location of boundaries being that what is most material and certain in a description must prevail over that which is less certain. Tyler on boundaries (30); Newsom v. Pryor's Lessees (7 Wheat., 7). But, where natural or artificial objects are wanting, course and distance must govern in the absence of a more certain call. "If a grant be made which describes the land granted by course and distance only, or by natural objects not distinguishable from others of the same kind, course and distance though not safe guides are the only guides given us and must be used. Chinoweth v. Haskell's Lessees (3 Pet., 92).

Was Perrin's line established by the most material and most certain calls of the Hancock survey?

Examiner Owen, under the instructions of your office, appears to have tested Perrin's survey by the calls of the grant rather than by Hancock's field notes. He determined in his judgment what line should have been surveyed by Hancock according to the calls of the grant, and he therefore concluded that such was the line actually surveyed. Finding that all the original corners set by Hancock have been destroyed; that not one of them is to be found, and that no witness can be found who knows where any of those old corners stood, he says:

"Where would an intelligent surveyor, actuated by no motive save that of complying as nearly as possible with the terms of the grant, run the line from station 20 to station 25?"

Keeping ever in mind the department's injunction that both lengths of lines and topography must be considered in the location of this boundary, and that said lines should strike "a fair average line between hill and valley," following, as nearly as possible the foot of the mountain, the examiner has found a condition of affairs extremely difficult to unravel.

It can not be seen how the line actually run by Hancock could be ascertained with any reasonable degree of certainty by the rule adopted to determine it. While the foot of the mountain is
9 in one sense a permanent natural object or feature, it identifies no particular or definite spot by which the survey actually made can be located. It is a matter of judgment or opinion where the mountain ends and where the valley begins. The opinions of different persons upon that question would probably differ so widely as to leave the identification of the foot of the mountain in too much doubt and uncertainty to furnish a guide to determine the line actually run. The uncertain and indefinite character of such description

was recognized by Examiner Owen, especially with reference to the country along the line of this survey. He says:

The question of determining the foot of the mountain is an intensely difficult one, and is purely a matter of judgment, and construction of the definition of that phrase.

After stating that from the actual flat valley there rises an easy gentle slope "called a Mesa," and that the question whether the gentle slopes or mesas are a part of the mountain must be considered in fixing the foot of the mountain, he says: while one man of good judgment might interpret this as belonging to the mountain, another equally competent and experienced might insist that it has no connection with it whatever. It will thus be seen that a description so indefinite and uncertain which may change according to the opinions of men of equal judgment and experience can not be relied upon as a standard by which to fix the line of an actual survey in the execution of which the judgment of the surveyor as to what is the exact locus of the foot of the mountain has been exercised.

It does not appear from the returns of the Perrin survey of 1896, or from any of the reports of the examination thereof, that "M 21" of Hancock's survey has been identified sufficiently to warrant the termination of the line at 20 chains. The mere fact that Perrin found a blazed sycamore there having no distinguishing mark from other trees of the same kind, furnishes no proof that it is the original tree designated by Hancock as "M 21" especially when found by such utter disregard of distance and to a certain extent out of course. The rule that monuments will not invariably control where they are involved in doubt and obscurity and where no mistake can reasonably be supposed in course and distance, applies with great force in this case where the supposed monument contains no evidence of the identity of the original monument and where it can not reasonably be supposed that such excessive error in distance could have occurred.

In his survey of 1885 Perrin at 30.15 chains found a burned sycamore stump which he reported he was unable to determine whether it was station 21, as there were several burned sycamore stumps in the vicinity. He, however, accepted it as "M 21" and it certainly gratified the call better than the sycamore found at 20 chains being corroborated by course and distance. In his survey of 1896 he reports that at 30 chains he found no trace of a sycamore tree or evidence of their having been a tree at that point, and therefore determined that the sycamore at 20 chains is the corner which he marked "M 21." Examiner Owens, however, found the burned sycamore stump at about 30 chains, which is evidently the stump found and reported by Perrin in 1885.

In explaining why he discredited his survey of 1885, Perrin also stated that Hancock's field notes show that in running the line from 21 to 22 he crossed the creek at 1.00 chain, which is about the same distance (0.85) given by him (Perrin) running the line from "M 21" as established by his survey of 1896. That proves nothing, as Perrin's

field notes of the survey of 1885 show that in running the line to station 22 from the burned stump, he crossed a creek at 0.85 chains. Examiner Owens in running the line from the burned stump reports that he crossed it at 0.70 chains. This call was therefore gratified upon either line.

Examiner Owen submits with his report a diagram showing the relative position of the different lines of survey on which is marked a point "B" at 30 chains from "M 20." With reference to that point he says:

"If we begin at Perrin's Cor. 20 and run Hancock's course and distance to 21 we shall arrive at 'B' as shown on my sketch.

"A projection of Hancock's courses and distances from 'B' point has not been given on the plat for the reason that it lies very close to that run from the old sycamore stump (the blue line) and its position throughout may be readily inferred if desired.

Assuming that Perrin's station 20 is the original station 20 located by Hancock, and that monument 21 is not in existence and no evidence is available by which its location can be determined, except course and distance, station 21 must be located at point B if it, in fact, answers Hancock's call for course and distance, because, as said by the court in Chenoweth v. Haskell's Lessees, supra, in the absence of all others, course and distance "though not safe guides, are the only guides to govern us, and must be used."

You do not find that there is any evidence identifying Perrin's station 20 as the original station established by Hancock, but you refused to require him to prolong his line between 20-21 to 30 chains because it would carry the next two lines too far into the mountain and because of the discrepancies that would be shown by running the line from other well established monuments. Referring to the statement of Examiner Owen that if Hancock's boundary is reproduced from station 25 westward, it will fall nearly 4 chains southwesterly of Perrin's 23-24 and throw station 20 about 13 chains southwesterly of Perrin's 20. You say: "If the position is taken that exact figures of the patent are to govern it is quite as proper to begin at No. 25 as No. 20. The result would be to diminish the grant and enlarge the area of public lands."

Whether Hancock's line was or was not in fact carried too far into the mountain is a question that can not now be controlled by the department. The course suggested by you could be only justified upon the theory that monuments 20 and 25 are equally well established and no reason exists why one should be preferred to the other, and even in that event a reversal of courses and distances would not be justified unless they were found to coincide with the regular calls of the
11 patent. When, by reversing the direction, course, and distance do not coincide with the natural calls, or the natural calls can not be identified, the regular courses and distances must be followed. Ellenwood v. Standiff (42 Fed. Rep., 316); Simmons' Creek Co. v. Doran (142 U. S., 417).

You state that there is an element of uncertainty as to the identity of station 20 and that "it would be more regular to adopt a tolerably certain starting point, namely, corner No. 25, between the forks of a well-known creek at the other agreed and accepted corner." Examiner Owen is of the opinion also that every reasonable man must admit that station 25 in the forks of Devil's canon is probably nearer to the position where Hancock placed it than any other of Perrin's corners.

The Department is not impressed with that view. On the contrary, the conclusion to be drawn from the returns of the several surveys of 1867, 1885 and 1896, and from the reports of the examiners, is that the identity of station 20 has been established beyond reasonable doubt, if not positively. The survey of the line east of station 25 and west of station 20 has been accepted by your office and by the grant claimants as correct. In your letter of February 6, 1901, the surveyor general of California, you say: "From the corner 'M 1' (Muscupiabe 1) to the corner M 20, the resurvey of the Muscupiabe boundaries apparently conforms as nearly as practicable to the original patent, and the location of M 20 has apparently never been questioned." It is also conceded by the appellant that the line west of 20 and east of 25 conforms substantially to the line described in the patent. Referring to the absence of original monuments between 20 and 25, he says:

There seems to be, however, no great amount of doubt as to the location of station No. 20, and it has been generally accepted by the different surveyors. Station No. 26 and the stations east of said 26 are not, so far as I am aware, now in dispute, and may therefore be considered and adopted as being substantially correct * * *

If station 19 has been correctly located, and no evidence now appears to the contrary, there is no reasonable ground upon which the correctness of the location of station 20 can be involved in doubt, in view of the fact that it not only responds to Hancock's call for course and distance, but Perrin reports that he found a sycamore tree on right bank of creek, course S. W.—the same description given by Hancock—from which he cut an overgrowth of about 2½ inches, and found "old mark 'M 20.'" Examiner Hollyday says he saw the chip that was taken from the sycamore tree above referred to, upon which the mark "M 2" is plainly seen. He also reports that three settlers, whose names he gives, told him that the point established by Perrin is about the point where station 20 was originally located, and adds: "I have every reason to believe that this tree is undoubtedly the old original station No. 20." Besides, the distance from station 19, 4.90 chs., is too short to admit of any great extent of error in chaining. If there is any evidence lacking to establish the identity of the mark as the original mark placed by Hancock, it is sufficiently supplied by the call for

12 'a sycamore 16 inches in diameter (Perrin 24) on the right bank of a creek * * * course southwest," which responds to the call for course and distance.

Station 25 has not been so clearly identified. From station 24 Hancock ran "N. 26 30′—105.71 chains, to a walnut tree four inches in diameter. Station at the forks of a canon on the left bank of a stream 12 links wide, course south 8 degrees west." Perrin running the same course found a walnut tree 10 inches in diameter "at forks of Devil's Canon Creek" 96.61 chains. Hollyday found Perrin's corner at 95.40 chains, which he says is a walnut tree having evidence of old blaze. There is no mark to indicate that it was the tree established by Hancock as station 25. His report shows that there are several walnut trees near Perrin's station 25, but there are no walnut trees within two or three chains of the forks, and that it is near the left bank of the west fork, but he does not state how near. Hancock calls for the corner on the left bank. Examiner Owen believes that Perrin's station 25 is nearer to the place where Hancock located it than any of the other corners, because of its position at the foot of the mountain, and because the forks of a well-known canon is a topographical feature that can be unmistakably and positively indicated.

The forks of the canon identifies no particular spot and does not, of itself, answer the call. "At the forks of a canon on the left bank of a stream" is merely descriptive of locality, and, unless the corner is found and identified, course and distance can not be disregarded. In Budd v. Brooke (3 Gill., 198), the call was for an oak tree standing upon a point at the mouth of a creek. The court said:

The fact that the boundary called for is represented by the patent as standing upon a point at the mouth of a creek, is, in the event of its loss, too vague and indefinite to control the positive expressions of the grant, as to course and distance. By pursuing the course and distance, we have the fixed and specified means of obtaining the identity of the spot where the line is to terminate. To reject the course and distance, is to determine that the particular spot on which the boundary stood is ascertained with reasonable certainty. The statement in the patent, that it stood on a point at the mouth of a creek, is not, of itself, sufficient evidence of its identical locality. It is not intended by this to discredit the station as it has been considered by appellant sufficiently established for all practical purposes. Referring to the station 20 he says: "I believe station 25 is not so well established but as it is described as being at the forks of a canon on the left bank of a stream twelve links wide, it must necessarily be very near the said forks and its location can not vary very much."

As the appellant considers that its identity has been sufficiently established, which is concurred in by your office, it will be so accepted, but it has not been so well established that it should be accepted as the beginning point to control other monuments that have been established with much greater certainty, especially when it does not coincide therewith or meet any known call of the grant.

13 The mere fact that other points of the grant exhibit greater discrepancies between courses and distances given in the patent and those accepted and acquiesced in by all parties, is not a reason

for disregarding course and distance in other parts of the line where monuments can not be found. Where monuments have been found or the location sufficiently identified and acquiesced in, course and distance must yield whether it be longer or shorter.

A protest has been filed by J. Victor Jessee in behalf of himself and other settlers along said boundary against the reconsideration of your decision approving Perrin's survey, asking that they be given an opportunity to defend their rights. He states that he is personally acquainted and familiar with every topographical call, course and distance, and station along the boundaries of said grant having made the survey with Deputy Perrin that it was he who found Perrin's stations 20, 21, and 22, which are beyond doubt the original corners established by Hancock.

No part of said line is in controversy, except that portion between stations 20 and 25. If any natural or artificial object indicating or marking Hancock's line of survey can be found they must necessarily control, and all parties in interest should be afforded an opportunity to establish such monuments if they can be found; but if they can not be identified as Hancock's original corners or stations by some ascertained monument or object the line of survey must be established by the course and distance given in the patent but closing upon station 25, irrespective of course and distance.

The case is therefore remanded with direction that a survey of the grant be made between stations 20 and 25 as now established in accordance with the views contained herein after giving notice to all parties in interest as above directed.

Your decision is modified accordingly and the papers are returned herewith.

Very respectfully,

(Signed) E. A. HITCHCOCK,
Secretary.

DEFENDANT'S EXHIBIT B.

Department of the Interior. D-19946.

WASHINGTON, D. C., *September 5, 1913.*

Muscupiabe Grant.

The Commissioner of the General Land Office.

SIR: The department has considered your letters of May 16 and June 11, 1913, relative to the protests of Lafayette Mehham and C. L. Cate against the decision of this department, dated February 28, 1907, approving the survey of Deputy Surveyor William A. Sickler in the reestablishment of the boundary of the Mus-
14 cupiabe Rancho, between stations 20 and 25 thereof. In your letter of May 16, 1913, you give a full statement of the essential facts of the case.

The Muscupiabe grant was patented on June 22, 1872, in accordance with the plat of survey approved on June 21, 1872. The survey was executed by Deputy Henry Hancock.

Doubt having arisen as to the boundaries of the grant, a contract was entered into with George H. Perrin, a contract deputy surveyor for its reestablishment. The plat of Hancock's survey showed 49 stations in the boundary, of which stations 21, 22, 23, and 24, are involved in this inquiry, which affects less than 300 acres of land.

Perrin's survey was approved by the General Land Office on October 30, 1901, after having been suspended for many years and subjected to close scrutiny, and mature consideration. The then owner of the grant therefore filed a protest against the Perrin survey between stations 20 and 25, and on March 27, 1902, your predecessor directed an examiner of surveys to make a careful examination of the Perrin survey and to report his findings. This examination and report were made, and after considering the same, the General Land Office declined to revoke its approval of the Perrin survey. October 30, 1902, the department reversed and vacated the decisions of your bureau and directed that a new line be established, saying:

No part of said line is in controversy except that portion between stations 20 and 25. If any natural or artificial objects indicating or marking Hancock's line of survey can be found, they must necessarily control and all parties in interest should be afforded an opportunity to establish such monuments, if they can be found. But if they can not be identified as Hancock's original corners or stations by some ascertained monuments or object, the line of survey must be established by the course and distance given in the patent, but closing upon station 25, irrespective of course and distance.

Pursuant to the instructions of the department a contract was entered into with Deputy Surveyer William A. Sickler for the reestablishment of that part of the boundary in dispute. The Sickler survey was approved by the General Land Office on May 19, 1906, and by the department on February 28, 1907.

Stations 20 and 25 of the grant have been positively identified, and there can be no doubt that they were correctly represented upon the plats of Perrin and Sickler, and located by their surveys.

From station 20 Hancock ran from a sycamore tree 16 inches in diameter, station on right bank of creek 10 links wide, course southwest, up said creek, north 54 degrees east, 30 chains, to a sycamore 30 inches in diameter, to station 21; thence south 51 degrees east, crossing a creek 10 links wide, course southwest, at 1 chain, 43 chains to a granite rock, 12 by 14 by 18 inches, in a rock mound, station at base of mountains; thence south 8 degrees and 30 minutes west, 62 chains, to station 23; thence south 64 degrees east, 150 chains, to station 24; thence north 26 degrees and 30 minutes east, 103 chains, 71 links, to a walnut tree 4 inches in diameter, station 25, at the forks of canyon on the left bank of stream, 12 inches wide, course south, 8 degrees west.

15 Sickler's survey follows Hancock's courses and distances, beginning at station 20 and closing at station 25, except that the distance between 24 and 25, instead of being 103.71 chains, was 85.70 chains. In other words, the discrepancy in the distance between

stations 20 and 25, following Hancock's courses, was arbitrarily deducted from the distance between stations 24 and 25.

Perrin's line, beginning at station 20 ran north 52¾ degrees east, 20 chains; thence south 50 degrees east, 42.94 chains; thence south 8 degrees and 30 minutes west, 62 chains; thence south 64 degrees east, 158.20 chains; thence north 26 degrees and 30 minutes east, 96.61 chains, to station 25.

It appears that Perrin did not extend the line from station 20 to 30 chains, as called for in the field notes of the Hancock survey, because to do so would be to disregard the topography given by Hancock as well as a sycamore tree which he adopted as station 21. This tree corresponded with that described in Hancock's field notes and bore evidence of having been marked. Moreover, adopting that tree as station 21, he would on the next call cross the creek referred to by Hancock at substantially the correct distance and with a slight variation of the course. He found evidences of the corner at station 22.

One of the examiners of surveys who examined Perrin's work in the field found that to extend the line between stations 20 and 21 to 35 chains it would be necessary to cross the creek referred to by Hancock several times, and that the 20 chains *paint* would fall in the bed of the creek. This examiner found no evidence of a sycamore tree or stump 30 chains from station 21 nor any other evidence of a corner.

The substantial correctness of Perrin's work has also been attested by two other examiners of surveys.

From what has been stated it appears that the one fact which may be said to have been satisfactorily proven by Sickler's survey was that the specific distances given by Hancock can not be reconciled with the undoubted locations of stations 20 and 25. There is and was no warrant in holding that the error in distance made by Hancock was wholly between stations 24 and 25, nor is there any fact disclosed which would warrant an affirmative finding that the defect in the Hancock survey was wholly a matter of distance in one or all of the lines. The fact of error in his field notes having been established and the precise nature of the error not appearing, it may be that the distances between each of the stations from 20 to 25 are too great; that the error was between any two of the stations or that such error arose alone from Hancock's failure to correctly return his courses. Under such circumstances the courses and distances given by Hancock should not be resorted to as determinative of any question until every source of information has been exhausted. The instructions to Surveyor Sickler clearly contemplated that he should avail himself of any competent evidence. It is obvious from the record that he contented himself with running a line under the technical rule that distance must yield to course where they
16 cannot be reconciled, which line, under the facts of the case, was wholly arbitrary and unsupported by anything that

could induce a belief that it accurately marked the boundaries of this grant.

Were there nothing with this record tending to sustain Perrin's survey as the correct relocation of stations 21, 22, 23 and 24 of the Hancock survey; were it conceded that Perrin's survey arbitrarily deducted 10 chains from the first and 8 chains from the last course it would still be entitled to as much respect as Sickler's survey, which just as arbitrarily deducted the entire 18 chains between stations 24 and 25. Perrin's survey having been approved and rights thereunder having attached, the department was not justified, upon the ground that it was arbitrary, in setting it aside in favor of a survey wholly lacking in any evidence of correctness as a relocation of the Hancock survey except such as were afforded by courses and distances clearly shown to have been incompatible.

With the papers transmitted by you are certain affidavits, to which you refer. These affidavits, in connection with the physical facts referred to by Perrin in his field notes and by the examiners who inspected Perrin's works, go far toward convincing the department that Perrin's survey was, substantially, a relocation of the Hancock survey.

One of the affiants, J. D. Newell, alleged that he was employed in the year 1883 as head chairman in a survey of the boundaries of this rancho made by one William Reynolds, who was employed by the then owner of the grant, John Hancock; that Hancock was present at and superintended the erection of the monuments of that survey; that station 21 was established at a sycamore tree whose top had been cut off and whose trunk had been burned; that he visited said station 21 on August 14, 1905, and found said sycamore; that the tree was in the same condition as when first seen, except that there had been carved thereon the letter M and the figures 21; that south 51 degrees east 43 chains from said sycamore a monument was constructed of a pile of rocks 18 inches high and 3 feet in diameter, and upon one of the rocks were inscribed the letter M and the figures 22; that he found the rock above mentioned on August 14, 1905. He also described the erection of monuments at stations 23 and 24 and the subsequent identification of both in the month of August, 1905.

Samuel Martin, another of the affiants referred to, alleged that in the year 1880 he purchased the possessory rights of one Simpson in a tract of land, the southwesterly boundary of which is that portion of the line of the Muscupiabe Rancho between stations 21 and 22. He identifies the sycamore tree referred to by Newell and in Perrin's field notes and alleges that the same was universally accepted by all persons in the community as truly marking said station 21. He also described and identified station 22. Martin further refers to the adjustment of the difference in the year 1896 between himself and one Meyers, who owned the land immediately south of the line between stations 21 and 22, whereby a wire fence was constructed

between the sycamore tree at station 21 and the pile of rocks at station 22 as marking the boundaries of the rancho.

17 Elizabeth Martin, the wife of said Samuel Martin, alleged that in 1873 her father, William Brown, settled upon public land and built a house thereon at a point about a quarter of a mile northeast from station 21; that she was then 12 years old and had resided upon the land continuously, with the exception of about one year; that station 21 was marked in 1873 by a sycamore tree, which had inscribed thereon the letter M and the figures 21; that about twenty-eight years prior to the date of her affidavit some unknown person cut off the top of the tree and burned the trunk thereof, obliterating the marks referred to; that about the time her father settled upon the land aforesaid a controversy arose between him and John Hancock, the then owner of the rancho as to the location of station 21, which resulted in a survey, at their mutual expense, which design*a*ted the sycamore tree as station 21; and that this designation was accepted by both parties.

There is also on file the affidavit of W. L. Brown, city engineer of San Bernardino, California, alleging that during April 1907, he visited the land in controversy, and found at 20 chains north, 54 degrees and 30 minutes east, from station 20, a sycamore tree 3 feet in diameter with the top cut off about 25 feet above the ground and badly burned on the western side for 12 feet above the ground, which had been marked by the Forest Service, in 1896, as a corner common to the Muscupiabe Rancho and the San Bernardino National Forest. This tree was the one adopted by Perrin as station 21 and referred to in the affidavits of Newell and the Martins. This affidavit was corroborated by C. L. Cate and Lafayette Mecham.

In Ayers v. Watson (137 U. S., 584) the Supreme Court of the United States held:

Courts have always been liberal in receiving evidence with regard to boundaries which would not be strictly competent in the establishment of other facts. Old surveys, perambulation of boundaries, even reputation, are constantly received on the question of boundaries of large tracts of land. The declarations of surveyors made at the time of making a survey have been admitted.

Upon consideration of the entire record, the department is convinced that the setting aside of the Perrin survey and the approval of that made by Sickler was entirely unwarranted by anything then or now before it. There would have been equal justification in proceeding from station 25, and, reversing Hancock's courses, closing arbitrarily on station 20, regardless of course and distance between station 21 and 20, which would have thrown all land in controversy outside the rancho. Under these circumstances, the approval of the Sickler survey is vacated and that survey is hereby rejected and held for naught; the line established by Perrin between stations 20 and 25 is adopted as the boundary of the grant, and you are directed to take appropriate steps to reestablish and appropriately mark Perrin's line and the lines of the public lands affected thereby.

The department concurs in your recommendation that the settlers in the territory involved be permitted to amend their entries
18 to include the area taken from them by the erroneous approval of the Sickler survey.

The record is herewith returned.

(Signed) ANDRIEUS A. JONES,
First Assistant Secretary.

PLAINTIFF'S EXHIBIT C.

Department of the Interior.

WASHINGTON, *December 16, 1914.*

D-19946.

Muscupiabe grant. "E." 158,889.

Motion denied.

Motion for rehearing.

By departmental decision of September 5, 1913, the Commissioner of the General Land Office was directed to take proper steps to reestablished and properly mark the lines and monuments of the Muscupiabe Rancho from stations 20 to 25 thereof in accordance with the reestablishment survey made by George H. Perrin of the Hancock lines, and the approval of the survey of that portion made by William A. Sickler was vacated and Sickler's survey rejected and held for naught. A motion for rehearing has been filed by the grant claimant.

It is urged in support of the motion that irrespective of the relative merits of the Perrin and Sickler reestablishment surveys, the department was without proper authority to disturb the Sickler survey which had been approved by the department Februa-y 28, 1907, and had stood for more than six years as the correct line of the grant boundary.

This line of argument might be applied in behalf of the Perrin survey which was approved October 30, 1901, after thorough investigation and careful consideration.

The Hancock survey is the one which governs the limits of the grant, and the effort has been to properly reestablish the lines of that survey. The department is convinced that the Perrin lines more accurately delineate the original survey than does the later survey made by Sickler. The Perrin survey should not have been disturbed. The present purpose of the department is to correct the error which was made when that survey was set aside and the Sickler survey substituted therefor.

The motion is denied.

(Signed) A. A. JONES.
First Assistant Secretary.

19 Motion to dismiss.

Filed February 18, 1915.

* * * * * * *

Comes now the defendant, by his attorneys, and moves to dismiss the bill herein filed; and for cause shows:

1. That the plaintiffs have not in or by their bill exhibited a cause for relief in equity in that it appears, on the face of the bill and its exhibits,

(*a*) That such vested right or title as plaintiffs possess in the lands known as the Muscupiabe Grant rest upon the patent issued by the United States on June 22, 1872, as averred in the first paragraph of the bill, pursuant to and describing the land demarcated by the so-called Hancock survey, and in no way upon the so-called Sickler survey;

(*b*) That neither the Perrin nor the Sickler survey or retracements of the lines of the Hancock survey could increase or diminish, nor did they undertake to increase or diminish, the amount of land actually conveyed by the United States, under the patent aforesaid, to the owners of the Muscupiabe Grant, but were merely surveys to ascertain and to locate on the ground the lines of the Hancock survey, in order to ascertain where the line of the public domain ends and the line of the Muscupiabe Grant commences;

(*c*) That the duty of ascertaining and determining what are public lands of the United States subject to survey and disposal under the public land laws devolves by law upon the Secretary of the Interior;

(*d*) That the authority for making, correcting, and retracing official public surveys is wholly and exclusively within the jurisdiction of the Secretary and, as such, he is charged by law with the duty of the making, correcting, and retracing of such public surveys, and the same involves the exercise of judgment and discretion.

(*e*) That, as the bill and exhibits show, the Secretary is merely endeavoring to ascertain and determine where the lines of the Muscupiabe Grant or Rancho, between stations 20 and 25 of the Hancock survey, as surveyed and patented, actually are located so that the same may be adjusted with reference to the public domain contiguous thereto, and not to resurvey said grant nor alter the lines of the land actually conveyed by the patent aforesaid.

2. That in essence and effect this bill seeks a review by the court of the action of the Secretary of the Interior in a matter over which he has sole and exclusive jurisdiction and concerning which his functions and actions are wholly discretionary and are not subject to control or review by the courts in any direct proceeding for injunction or otherwise.

3. That the legal title to the land affected by the Perrin and Sickler surveys, and in controversy in this suit, is either in the plaintiff

or in the United States, and in no event in the defendant;
20 that there is an absence of a necessary party, in this: that upon the point as to whether the land lying between the lines of the Perrin survey and the Sickler survey is a part of the public domain of the United States, the United States is entitled to be heard, but has not been made a party to this suit and has not, in this behalf, consented to be sued.

Wherefore he prays that the bill be dismissed, with his reasonable costs, and that he be permitted to go hence without day.

FRANKLIN K. LANE,
Secretary of the Interior.

By his attorneys:

PRESTON C. WEST,
Solicitor for the Department of the Interior.
C. EDWARD WRIGHT,
Assistant Attorney.

Opinion.

Filed July 25, 1916.

* * * * * * *

The Secretary of the Interior is not undertaking in any way to change or amend the patent originally granted, but merely endeavoring to ascertain its boundaries.

The bill is dismissed. Settle decree on notice.

By the court:

WALTER I. MCCOY, *Justice.*

Decree.

Filed July 26, 1916.

* * * * * * *

This cause came on to be heard on defendant's motion to dismiss the bill of complaint herein filed, and was argued by counsel; whereupon on consideration thereof, the court having been fully advised in the premises, it is, this 26th day of July, 1916,

Ordered, adjudged, and decreed that the motion to dismiss be, and the same hereby is, sustained, and that the bill of complaint be, and the same hereby is, dismissed, with costs to the defendant to be taxed by the clerk.

By the court:

WALTER I. MCCOY, *Justice.*

From the foregoing decree plaintiffs pray an appeal on the day aforesaid, in open court, to the Court of Appeals, and the same is hereby allowed, and the penalty of the appeal bond for costs is fixed at $100, or, in lieu thereof, a deposit of $50.

By the court:

WALTER I. MCCOY, *Justice.*

21 Assignments of error.

Filed July 27, 1916.

* * * * * * *

The appellants, Joseph J. Darlington et al., hereby designate the following assignments of error in the certain final decree of the court, entered in the above-entitled cause July 26, 1915, dismissing the bill of complaint filed therein by plaintiffs:

1. In failing to find and hold that as the Muscupiabe grant had been surveyed and a patent issued according to such survey in 1872, the grant and survey thereof sustained by the Supreme Court of the United States Jan. 27, 1890 (U. S. v. Hancock, 133 U. S., 193), and the boundaries reestablished, lost or destroyed monuments being replaced, by a survey made under the direction of the Secretary of the Interior and approved by that officer, that thereby the jurisdiction of the Interior Department over said grant, including the boundaries thereof, was at an end.

2. In failing to find and hold that the survey of this grant made under the order of the Secretary of the Interior given in 1902, under which the calls in the prior patent issued under the grant were reestablished, was in effect a nunc pro tunc survey of the grant; in other words, it replaced or reestablished the monuments called for in the survey on which the patent issued, and the patent, together with the resurvey, are entitled to the same protection as had a new patent issued on the grant following the resurvey reestablishing the monuments and fixing the calls in the survey on which the patent was issued.

3. In failing to find and hold that the order and direction for the new survey of this grant was but an attempt to reopen a controversy settled under the final decision of the Secretary of the Interior for more than eleven years, and on the same record and in the absence of any charge of fraud to substitute the judgment of the present incumbent of the office in disregard to the final judgment of his predecessor in office, and in destruction of the rights of the grantee claimant.

4. In failing to find and hold that the order of the Commissioner of the General Land Office, approved by the Secretary of the Interior, herein complained of, directing a further survey of this grant and with directions for the destruction of the monuments of the survey made under the order of the Secretary of the Interior, given more than eleven years prior thereto, is ultra vires and void.

5. In failing to find and hold that the only possible effect of the order herein complained of for a new survey of this grant is to change or amend the patent given on said grant, as the patent must follow and be limited by the survey on which it was issued, the calls of which as finally established by the monuments on the

ground under the prior final order of the Secretary of the Interior are proposed to be changed thereby.

6. In holding that the Secretary of the Interior is not
22 undertaking in any way to change or amend the patent originally granted, but merely endeavoring to ascertain its boundaries.

7. In discharging the rule to show cause, and in granting defendant's motion to dismiss plaintiff's bill filed for the purpose of restraining the defendant from carrying into effect his arbitrary and unwarranted order for a further survey of the plaintiff's grant with destruction of the monuments established under the prior final order of the Secretary of the Interior.

8. In failing to grant to the plaintiff relief as prayed for against the unlawful and arbitrary act of the defendant in attempted diminution of the plaintiff's grant.

9. In failing to grant the injunction prayed for by the appellants and in dismissing their bill of complaint.

10. Other errors appearing on the face of the record herein.

ALEXANDER BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
Attorneys for Appellant.

Service of copy of the above assignments of error acknowledged this 27- day of July, 1916.

C. EDWARD WRIGHT.
P. S. B.

Designation of record.

Filed July 27, 1916.

* * * * * * *

To John R. Young, Esq., Clerk, Supreme Court, D. C.

DEAR SIR: On behalf of the above Joseph J. Darlington et al., plaintiffs and appellants, we request that you will cause to be prepared the transcript of record on appeal in the above-entitled cause; and we hereby designate the following to be included in said transcript:

1. Bill of complaint, and all exhibits attached thereto.
2. Rule to show cause.
3. Return of defendants to rule to show cause.
4. Motion of defendants to dismiss the bill of complaint.
5. Opinion of court.
6. Decree discharging rule to show cause, and dismissing the bill of complaint, including endorsement thereon of appeal in open court and order fixing amount of appeal bond for costs.
7. Assignments of error.

8. Memorandum of approval and filing of bond for costs on appeal.
9. This designation.

ALEXANDER BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
Attorneys for said Appellants.

23 Service of copy of above designation acknowledged, this 27- day of July, 1916.

C. EDWARD WRIGHT,
Attorney for Defendants.
P. S. B.

Memorandum.

July 31, 1916.—Bond on appeal for $100 approved and filed.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 44, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 33,205 in Equity, wherein Joseph J. Darlington and John H. Clapp, trustees of the estate of John M. Clapp, deceased, are plaintiffs, and Franklin K. Lane, Secretary of the Interior, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said district, this 25th day of August, 1916.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*
By W. E. WILLIAMS,
Assistant Clerk.

(Endorsed on cover:) District of Columbia Supreme Court. No. 3014, Joseph J. Darlington et al., appellants, vs. Franklin K. Lane, etc. Court of Appeals, District of Columbia. Filed Sep. 8, 1916. Henry W. Hodges, clerk.

24 TUESDAY, *April 3rd, A. D. 1917.*

* * * * * * *

JOSEPH J. DARLINGTON AND JOHN H. CLAPP, TRUSTEES, estate of John M. Clapp, deceased, appellants, *vs.* FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. } No. 3014.

The argument in the above-entitled cause was commenced by Mr. F. W. Clements, attorney for the appellants, and was continued by Mr. C. E. Wright, attorney for the appellee, and was concluded by Mr. F. W. Clements, attorney for the appellants.

25 In the Court of Appeals of the District of Columbia.

JOSEPH J. DARLINGTON AND JOHN H. CLAPP, TRUSTEES, estate of John M. Clapp, deceased, appellants, *vs.* FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. No. 3014.

Opinion.

(Mr. Justice Van Orsdel delivered the opinion of the court.)

Appellants filed a bill in equity in the Supreme Court of the District of Columbia to restrain defendant, Secretary of the Interior of the United States, from interfering with the boundaries by resurvey of a Mexican land grant which had been patented to one White, through whom the plaintiffs claim by mesne conveyances.

It appears that the claim of White to the land in question was confirmed by the commission appointed by authority of an act of Congress (9 Stats. L., 631) to adjust Mexican land claims in California. The order of confirmation is as follows: "In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that his application for a confirmation be allowed, with the following boundaries, to wit: On north and east by the foot of the mountain, on the south by the Agua Caliente, and on the west by the cotton woods, which are on the other side of the creek, reference being had to the map accompanying the expediente." A survey of the lands was made by one Hancock in 1868, which was finally approved by the Secretary of the Interior, and a patent issued thereon on June 22, 1872. In 1885 a bill was filed by the United States to set aside the patent on the ground that the approval of the Hancock survey had been procured by fraud and misrepresentation. The case finally reached the Supreme Court of the United States (United States vs. Hancock, 133 U. S., 193), but the court refused to sustain the allegations of fraud and ordered the bill dismissed.

26 The grant was very irregular in shape, there being in the Hancock survey forty-nine calls or stations. In 1885 a survey of the surrounding Government land was undertaken, and accordingly a resurvey of the patented grant was made by one Perrin, which he retraced in 1896. Perrin reported the marks established by Hancock in place, except the marks between stations 20 and 25. The important discrepancy was between stations 20 and 21. Hancock's line from station 20 to station 21 was in distance thirty chains, station 21 being designated by a sycamore tree. Perrin in 1885 found a burnt sycamore tree at thirty and fifteen hundredths chains. In 1896 he reported that he found no mark, but at twenty chains found a blazed sycamore tree. He found, however, that by following the courses and distance of Hancock from the sycamore tree so found, he could not reach station 25, but was forced to make an arbitrary closing of the lines at that point. Protest was made by the owners against this survey since by establishing station 21 at twenty chains according to Perrin's survey, instead of at thirty chains according to Hancock's survey and as set forth by courses and distances in the patent, it excluded about three hundred acres from the grant.

The Commissioner of the General Land Office vacated his approval of the Perrin survey, and one Owen, a special examiner, was instructed by the department to examine into the survey between stations 20 and 25. In 1902 Owen reported, in effect, that from marks or topography of the country he found a condition difficult to unravel. He said: "The question of determining the foot of the mountain is an intensely difficult one and is purely a matter of judgment, and construction of the definition of that phrase." Owen, however, reported that at thirty chains from station 20 in the direction indicated in the Hancock survey he found a burnt sycamore stump. On this report the Secretary under date of October 30, 1902, rendered a decision reviewing the entire history of the case, and directed the Commissioner of the General Land Office to cause a survey of the
27 grant to be made between stations 20 and 25, instructing him that "if any natural or artificial object indicating or marking Hancock's line of survey can be found they must necessarily control and all parties in interest should be afforded an opportunity to establish such monuments if they can be found; but if they cannot be identified as Hancock's original corners or stations by some ascertained monument or object the line of survey must be established by the course and distance given in the patent but closing upon station 25, irrespective of course and distance."

In accordance with these instructions one Sickler, a deputy surveyor, made a survey which established and marked the line according to the calls of the Hancock survey and as called for by courses and distances in the patent requiring, however, an arbitrary closing at station 25. This survey was approved by the Secretary February 28, 1907. With this final establishment of the line in conformity with the terms of the patent the adjoining public lands were surveyed and

platted, which surveys were approved by the Secretary and the lands disposed of in accordance therewith.

This disposition of the dispute seemed to have settled the whole matter until the Secretary, on September 5, 1913, assumed jurisdiction of the matter and directed that the order approving the Sickler survey be vacated and that the line be reestablished and marked according to the Perrin survey as returned in 1896 and rejected in 1902, and that "the settlers in the territory involved be permitted to amend their entries to include the area taken from them by the erroneous approval of the Sickler survey." Plaintiffs petitioned the Secretary to revoke this order, which was denied on December 16, 1914; hence this action to restrain him from carrying the order into effect.

Defendant moved to dismiss the bill, admitting that the title of plaintiffs rests upon the patent of 1872 describing the land demarcated by the Hancock survey, but averring that all subsequent surveys have been for the purpose merely of ascertaining and locating on the ground the lines of the Hancock survey; that the
28 duty of ascertaining and determining this matter devolves by law upon the Secretary of the Interior and is, therefore, within his discretion and not subject to control in this action, and that the object is to establish the Hancock survey and not alter the lines as actually patented.

On hearing the court below sustained the motion and dismissed the bill. From the decree this appeal was taken.

The Secretary, in ordering the Sickler survey to reestablish and monument the lines of the Hancock survey according to the courses and distances called for in the patent, adopted the only legal course open to adjust the confused situation. The rule of law applicable in cases of disputed boundaries is concisely stated in the decision of the Secretary directing the Sickler survey, as follows: "Those rules and the order in which they are usually considered are: First, natural boundaries; second, artificial marks; third, adjacent boundaries; and fourth, course and distance. These rules, however, are not inflexible as, where the location of monuments and objects called for are involved in doubt and obscurity and can not be ascertained with any reasonable degree of certainty and where no mistake can reasonably be supposed in course and distance. The controlling principle in the location of boundaries being that what is most material and certain in a description must prevail over that which is less certain. Tyler on Boundares (30); Newsom vs. Pryor's Lessees (7 Wheat., 7). But where natural or artficial objects are wanting, course and distance must govern in the absence of a more certain call. 'If a grant be made which describes the land granted by course and distance only or by natural objects not distinguishable from others of the same kind, course and distance, though not safe guides, are the only guides given us and must be used.' Chinoweth vs. Haskell's Lessees (3 Pet., 192)."

But the order before us is not to make further endeavor to establish the correct Hancock line, but to arbitrarily set aside the order
29 confirming the Sickler survey and to substitute the Perrin line. Of the Perrin survey the Secretary, in his decision, elicited by the Owen report, said: "It does not appear from the returns of the Perrin survey of 1896 or from any of the reports of the examination thereof that 'M 21' of Hancock's survey has been identified sufficiently to warrant the termination of the line at 20 chains. The mere fact that Perrin found a blazed sycamore there having no distinguishing mark from other trees of the same kind furnishes no proof that it is the original tree designated by Hancock as 'M 21,' especially when found by such utter disregard of distance and to a certain extent out of course. The rule that monuments will not invariably control where they are involved in doubt and obscurity and where no mistake can reasonably be supposed in course and distance, applies with great force in this case where the supposed monument contains no evidence of the identity of the original monument and where it cannot be reasonably supposed that such excessive error in distance could have occurred. In his survey of 1885 Perrin at 30.15 chains found a burned sycamore stump which he reported he was unable to determine whether it was station 21, as there were several burned sycamore stumps in the vicinity. He, however, accepted it as 'M 21' and it certainly gratified the call better than the sycamore found at 20 chains, being corroborated by course and distance. In his survey of 1896 he reports that at 30 chains he found no trace of a sycamore tree or evidence of there having been a tree at that point, and therefore determined that the sycamore at 20 chains is the corner which he marked 'M 21.' Examiner Owen, however, found the burned sycamore stump at 30 chains, which is evidently the stump found and reported by Perrin in 1885."

Of the probable correctness of the Hancock survey the court, in United States vs. Hancock, supra, said: "Some question is made as to the correctness of the survey, and that turns as a question of fact upon what is meant by the expression 'Agua Caliente' in the various descriptions. If it means a stream known as Agua Caliente,
30 then the Government has no cause to challenge the survey, for it includes less than was really confirmed, but if it means a district of country known by that name in the northwestern portion of the San Bernardino Rancho, a neighboring tract, then the survey was excessive. If it were necessary for us to determine this question we think the evidence in the case indicates that the stream and not the district was intended, but it is not the province of this court to correct a mere matter of survey like that. If made in good faith and unchallenged as this has been for over fifteen years, whatever doubts may exist as to its correctness must be resolved in favor of the title as patented."

We have, perhaps, dwelt at undue length on the survey and the legal authority of the Secretary to settle it according to the courses

and distances called for in the patent. If that were the only question before us, and it were still an open question in the department, it is elementary that we would be without jurisdiction to control the discretion of defendant and order which of the several surveys should be adopted. "The courts can neither correct nor make surveys. The power to do so is reposed in the the political department of the Government, and the Land Department, charged with the duty of surveying the public domain, must primarily determine what are public lands subject to survey and disposal under the public land laws. Possessed of the power, in general, its exercise of jurisdiction can not be questioned by the courts before it has taken final action." Kerwan vs. Murphy, 189 U. S., 35, 54.

But the crucial question here presented goes to the jurisdiction of defendant Secretary to reopen this case. The order for the remonumenting of the Hancock survey extended an invitation to all persons in interest to be heard, including those who had settles upon or initiated claims to surrounding lands. By this action the boundaries of the patented claim became fixed as the established line of demarcation between it and the surrounding public domain. With the approval of the Sickler survey, made in accordance therewith, we think the jurisdiction of the Secretary ended. The contention
31 now that the carrying into effect of the present order would not affect the title of plaintiffs is fallacious, for two reasons—(1) because it would cast a cloud upon their title, which would, at least, require a proceeding in court to remove, and (2), if acquiesced in, it would reduce the area of the patented grant by three hundred acres.

Much reliance is placed by counsel for the Government upon the case of Kerwan vs. Murphy, supra. There a claim had been patented based upon a survey which described the meander line of a lake as one of the boundaries. It was afterwards discovered that, between the meander line shown by the patent and the actual shore of the lake, there were about twelve hundred acres of unsurveyed land. The Government undertook to survey this land as Government land, and injunction was sought by the grantee to restrain the survey, on the ground that his claim extended to the lake. Of course, the court held that the Land Department could not be restrained from investigating whether or not there was Government land between the line defined in the patent and the lake. So here the department was well within its rights in ascertaining the boundary between the patented land and the Government domain. But when that had been accomplished and the matter had been closed by final order of the Secretary the jurisdiction of the officials of the Government ceased. Indeed, the distinction is clearly pointed out by the court in the Kerwan decision, as follows: "Noble vs. Union River Logging Co., 147 U. S., 165, is not to the contrary, for that was a case where the executive department had confessedly finally acted and then attempted to resume jurisdiction, and an injunction was sustained."

The rule is uniform that, when patent passes from the Government, the legal title passes with it, and all supervision or control over the land patented ceases in the officials of the Government. In Brown vs. Hitchcock, 173 U. S., 473, cited by counsel for defendant, as in many of the cases cited, the title had not passed by patent, and the court approved the rule announced in United States vs.
32 Schurz, 102 U. S., 378, 396, as follows: "Congress has also enacted a system of laws by which rights to these lands may be acquired, and the title of the Government conveyed to the citizen. This court has with a strong hand upheld the doctrine that so long as the legal title to these lands remained in the United States, and the proceedings for acquiring it were yet in fieri, the courts would not interfere to control the exercise of the power thus vested in that tribunal. To that doctrine we still adhere. But we have also held that when, by the action of these officers and of the President of the United States, in issuing a patent to a citizen, the title to the lands has passed from the Government, the question as to the real ownership of them is open in the proper courts to all the considerations appropriate to the case."

The land embraced within the grant was never a part of the public domain of the United States. The rights of the grantee were preserved by the stipulations of the treaty with Mexico. When the extent of his rights were finally ascertained and confirmed by the special tribunal commissioned by Congress for that purpose, nothing remained for the Land Department but to survey the lines and issue a patent. With the approval of the survey and the issue of the patent, the whole matter passed beyond the control of the department. For fraud practiced, either in making the survey or procuring the patent, the matter was still beyond the jurisdiction of the department, but subject to a proceeding in court to annul the patent, as was attempted in the Hancock case.

It may be stated broadly, therefore, that the jurisdiction of the officials of the Land Department over public lands passes with the delivery of a patent therefor. In Moore vs. Robbins, 96 U. S., 530, 533, it was said directly that it was a part of the daily business of the officers of the Land Department "to decide when a party has by purchase, by preemption, or by any other recognized mode, established a right to receive from the Government a title to any part of the public domain. This decision is subject to an appeal
33 to the Secretary, if taken in time. But if no such appeal be taken, and the patent issued under the seal of the United States and signed by the President is delivered to and accepted by the party, the title of the Government passes with this delivery. With the title passes away all authority or control of the Executive Department over the land and over the title which it has conveyed. * * * The functions of that department necessarily cease when the title has passed from the Government."

It logically follows that with the approval of the Hancock survey and the issue of the patent conveying to the grantee the lands therein

described, the jurisdiction of the Land Department ceased. The right of the department later to locate the line for the purpose of establishing boundaries of adjacent public lands was limited to the Hancock survey. As we have observed, and as the law required, if the station marks of the Hancock survey could not be found, it was the duty of the department, as was done by the Sickler survey, to establish the monuments by courses and distances as defined by Hancock and called for in the patent.

The approval of the Sickler survey was an official determination of the whole matter. For years this was accepted and the adjacent public lands were settled upon and disposed of on that basis. After the patent had been outstanding for over forty years, and the re-establishment of the original survey had been approved for many years, the present order was made. We think it is beyond the jurisdiction of the Secretary to thus revoke the order of his predecessor finally determining outstanding vested rights. "One officer of the Land Office is not competent to cancel or annul the act of his predecessor. That is a judicial act, and requires the judgment of a court." United States vs. Stone, 2 Wall., 525, 535. Or, as was said by Mr. Justice Miller in United States vs. Schurz, supra: "From the very nature of the functions performed by these officers, and from the fact that a transfer of the title from the United States to another owner follows their favorable action, it must result that at some stage or other of the proceedings their authority in the matter
34 ceases. It is equally clear that this period is, at the latest, precisely when the last act in the series essential to the transfer of title has been performed. Whenever this takes place the land has ceased to be the land of the Government; or, to speak in technical language, the legal title has passed from the Government, and the power of these officers to deal with it has also passed away."

An order of the Secretary of the Interior, revoking the order of his predecessor reestablishing and monumenting the boundary of plaintiffs' grant in accordance with the description in the patent, and arbitrarily substituting a survey considered and condemned by his predecessor, thereby greatly reducing the area of plaintiffs' patented grant, is an exercise of power equivalent to the revoking of a patent. It would amount to divesting plaintiffs of their property without due process of law, since a patent can only be annuled or cancelled by a court. Any attempt to thus interfere with rights so vested may be enjoined. In New Orleans vs. Paine, 147 U. S., 261, 264, the court, referring to Noble vs. Union River Logging Railroad, supra, in connection with the question it then had under consideration, said: "In that case it appeared that the only remedy of the plaintiff was to enjoin the Secretary of the Interior from revoking his approval of a certain map, which operated as a grant of land. His contemplated action amounted in effect to the cancelation of a land patent. So, in this case, if it were made to appear that the former survey had been completed and approved in such manner that all the lands included within the lines of the former survey

had become vested in the plaintiff, it is possible that it might be entitled to an injunction against any act which would have the effect of disturbing or unsettling a title thereby acquired."

The grantee and his successors have been in undisturbed possession of the patented area for over forty years. Considering a similar situation, involving the power of the Secretary of the Interior, by an order made in 1861, to challenge a survey of the south line of
35 the Fort Leavenworth Military Reservation made and approved in 1830, the court, in United States vs. Stone, supra, said: "It was made in the year 1830, and since that time both parties have held possession and claimed up to the lines then established by the survey. In the case of private persons, a boundary surveyed by the parties and acquiesced in for more than thirty years could not be made the subject of dispute by reference to courses and distances called for in the patents under which the parties claimed, or on some newly discovered construction of their title deeds. We see no reason why the same principle should not apply in the present case."

This is the only principle upon which the security of title can rest. If power rests in the Secretary of the Interior to cancel the orders of his predecessors finally determining property rights simply because he differs from them in opinion, there would be no such thing as a vested title derived from the Government. If an order can be revoked forty years after issue of patent, and ten years after final reestablishment of the lines of the patented grant, it can be done after the lapse of a hundred years. Upon the finality of proceedings in the Land Department depends the security of titles emanating from the Government. The present order, if carried into effect, would impair the title of plaintiffs as vested by the terms of the patent. It is, therefore, beyond the jurisdiction of the Secretary, and a restraining order should issue.

It follows that there can be no question of the jurisdiction of the court to restrain the Secretary from carrying the order complained of into effect. It would deplete the acreage of land patented by the Government and impair the vested rights of plaintiffs. The United States is not a party in interest, since the survey in question merely defines the boundary line of lands to which title never vested in the United States, except as trustee for the Mexican grantee, and to which, in confirmation of the trust, a patent had long since issued.

The threatened action of the Secretary is ultra vires. Dis-
36 cretionary power cannot be invoked, since there is no fact or question within his jurisdiction to be investigated or determined. In such cases it has been held repeatedly by the courts that injunction is the appropriate remedy. If an officer of the Government is without lawful power or jurisdiction to do the thing complained of, he may be enjoined with the same propriety as by mandamus he can be compelled to perform a duty imposed upon him by law.

The decree is reversed with costs, and the cause is remanded with directions to enter a decree restraining the defendant, Secretary of the Interior, from proceeding to carry the order complained of into effect.

Reversed and remanded.

37 FRIDAY, *June 1st, A. D. 1917.*

* * * * * * *

JOSEPH J. DARLINGTON AND JOHN H. Clapp, trustees estate of John M. Clapp, deceased, appellants, *vs.* FRANKLIN K. LANE, SECRETARY OF THE Interior. } No. 3014. April term, 1917.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said Supreme Court with directions to enter a decree restraining the defendant, Secretary of the Interior, from proceeding to carry out the order complained of into effect.

Per Mr. Justice VAN ORSDEL,
June 1, 1917.

38 In the Court of Appeals of the District of Columbia.
April term, 1917.

JOSEPH J. DARLINGTON AND JOHN H. CLAPP, TRUSTEES OF the estate of John M. Clapp, deceased, appellants, *vs.* FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. } No. 3014.

Petition for allowance of appeal.

Comes now Franklin K. Lane, Secretary of the Interior, and shows that on or about the 1st day of June, 1917, this court entered a judgment herein in favor of the appellants and against the appellee, reversing a decree of the Supreme Court of the District of Columbia in favor of the appellee; in which judgment of this court certain errors were committed to the prejudice of the appellee, all of which will appear more in detail from the assignment of errors filed with this petition.

The appellee further shows that said judgment of this court is subject to review by the Supreme Court of the United States under the

provisions of the fifth paragraph of section 250 of the Judicial Code, in that the validity of an authority exercised under the United States and the existence and scope of a power or duty of the appellee, he being an officer of the United States, are drawn in question.

Wherefore, he prays the allowance of an appeal removing this case to the Supreme Court of the United States for the correction of the errors complained of; that a transcript of the record, proceedings, and papers in the cause, duly authenticated, may be sent to the Supreme Court of the United States; and that the mandate of
39 this court may be stayed until further order.

FRANKLIN K. LANE,
Secretary of the Interior.

By his attorneys:

CHARLES D. MAHAFFIE,
Solicitor.
C. EDWARD WRIGHT,
Assistant Attorney.

40 In the Court of Appeals of the District of Columbia.

April term, 1917.

JOSEPH J. DARLINGTON AND JOHN H. CLAPP, TRUSTEES OF the estate of John M. Clapp, deceased, appellants.
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. } No. 3014.

Assignment of errors.

Comes now the appellee by his attorneys and says that in the record and proceedings of the Court of Appeals in the above-entitled cause and in the rendition of final judgment thereon, manifest error has intervened to the prejudice of the appellee, in this, to wit:

1. That the court erred in reversing the decree of the Supreme Court of the District of Columbia in favor of the appellee and against the appellants and in remanding the cause for a decree enjoining the appellee as prayed in the petition.

2. That the court erred in not affirming the decree of the Supreme Court of the District of Columbia.

3. That the court erred in failing to hold that the Secretary of the Interior was merely and duly attempting to ascertain and delimit the public lands of the United States from the lands owned by the appellants, and that he has authority and that it is his duty to ascertain and determine what are public lands of the United States and where their boundaries may be.

4. That the court erred in failing to hold that a survey or resurvey or retracement of the lines of a survey involving the boundaries of public lands in the United States, each and all, are matters exclu-

sively within the jurisdiction of the Secretary of the Interior to make or to determine or to establish.

41 5. That the court erred in not affirming the decree of the lower court on the ground, if, on no other ground, that the appellants' bill of complaint fails to allege or to show that the amount of land patented to them by the United States will be diminished by the action sought to be enjoined.

6. That the court erred in ordering a final decree against the Secretary of the Interior without affording him opportunity to make answer to the appellants' bill and to dispute certain statements of facts therein.

7. That the court erred in holding that the United States is not an interested party, entitled to be heard on the question as to where the land of the appellants ends and the public land of the United States begins.

Wherefore the appellee prays that for the errors aforesaid and other errors appearing in the record the judgment of said Court of Appeals may be reversed, annulled, and for naught esteemed, and that said cause may be remanded to said Court of Appeals with instructions to affirm the decree of the Supreme Court of the District of Columbia in said suit rendered, or for such further proceedings as may be determined, to the end that justice may be done in the premises.

FRANKLIN K. LANE,
Secretary of the Interior.

By his attorneys:

CHARLES D. MAHAFFIE,
Solicitor.

C. EDWARD WRIGHT,
Assistant Attorney.

(Endorsed:) No. 3014. J. J. Darlington et al. v. Franklin K. Lane, Secretary of the Interior. Petition for allowance of appeal and assignment of errors. Court of Appeals, District of Columbia. Filed June 2, 1917. Henry W. Hodges, clerk.

42 SATURDAY, *June 2nd, A. D. 1917.*

* * * * * * *

JOSEPH J. DARLINGTON AND JOHN H. CLAPP, TRUSTEES, estate of John M. Clapp, deceased, appellants,
vs.
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR. } No. 3014.

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States and to stay the mandate until further order, in the above-entitled cause, it is by the court this day ordered that said petition be and the same is hereby granted.

43 UNITED STATES OF AMERICA, *ss:*

To Joseph J. Darlington and John H. Clapp, trustees, estate of John M. Clapp, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Franklin K. Lane, Secretary of the Interior, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia, this 4th day of June, in the year of our Lord one thousand nine hundred and seventeen.

CHAS. H. ROBB,
Associate Justice of the Court of Appeals of the District of Columbia.

Service acknowledged this 4th day of June, 1917.
ALEX. BRITTON,
Counsel for Jos. J. Darlington et al., Trustees.

44 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 43, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Joseph J. Darlington and John H. Clapp, trustees estate of John M. Clapp, deceased, appellants, vs. Franklin K. Lane, Secretary of the Interior, No. 3014, April term, 1917, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 6th day of June, A. D. 1917.

[SEAL.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

(Indorsed:) Office of the clerk, Supreme Court U. S. Received July 1, 1917.

(Indorsement on cover:) File No. 26025, District of Columbia, Court of Appeals. Term No. 558. Franklin K. Lane, Secretary of the Interior, appellant, vs. Joseph J. Darlington and John H. Clapp, trustees estate of John M. Clapp, deceased. Filed July 2, 1917. File No. 26025.

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